

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs September 20, 2010

**JEREMY D. CALDWELL v. LINDA NEAL, AS CLERK OF CIRCUIT  
COURT WILSON COUNTY, TENNESSEE**

**Appeal from the Circuit Court for Wilson County  
No. 2009-CV-1935     John D. Wooten, Jr., Judge**

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**No. M2010-00473-COA-R3-CV - Filed December 28, 2010**

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Plaintiff in breach of contract action appeals the grant of summary judgment to the defendant. Finding that a genuine issue of material fact exists which precludes summary judgment, we reverse the judgment and remand for further proceedings.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Reversed;  
Case Remanded**

RICHARD H. DINKINS, J., delivered the opinion of the court, in which PATRICIA J. COTTRELL, P.J., M.S. and FRANK G. CLEMENT, JR., J., joined.

Jeremy Dwayne Caldwell, Whiteville, Tennessee, Pro Se.

Jeffrey M. Beemer and Kerry M. Ewald, Nashville, Tennessee, for the appellee, Linda Neal, as the Clerk of Circuit Court Wilson County, Tennessee.

**OPINION**

Jeremy Caldwell, an inmate presently incarcerated at the Hardeman County Correctional Facility, initiated this breach of contract action against Linda Neal, the Wilson County Circuit Court Clerk, to recover \$766.00 which was deducted from his trust account to pay costs assessed in the cases which led to his incarceration. In response to the complaint, Ms. Neal filed a motion for summary judgment supported by certified copies of judgments entered in the three criminal cases and a statement of material facts in accordance with Tenn. R. Civ. P. 56.03. Mr. Caldwell filed his affidavit opposing summary judgment. The court granted the motion, holding that Mr. Caldwell “failed to establish the elements of inducement of breach of contract.” Mr. Caldwell appeals, contending that the record shows that a genuine issue of material fact exists, i.e., whether the plea agreements resulting in the

judgments of conviction included assessing costs of those cases against him, and that, as a consequence, summary judgment is inappropriate.

## **I. Discussion**

This appeal is from a grant of summary judgment. Summary judgment is appropriate only if the “‘pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits . . . show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.’” *Martin v. Norfolk S. Ry. Co.*, 271 S.W.3d 76, 83 (Tenn. 2008) (quoting Tenn. R. Civ. P. 56.04). Since our review concerns questions of law, we review the record *de novo* with no presumption of correctness. *See* Tenn. R. App. P. 13(d); *Bain v. Wells*, 936 S.W.2d 618, 622 (Tenn. 1997). We take the strongest view of the evidence in favor of the nonmoving party, allowing all reasonable inferences in its favor and discarding all countervailing evidence. *See Shadrick v. Coker*, 963 S.W.2d 726, 731 (Tenn. 1998) (citing *Byrd v. Hall*, 847 S.W.2d 208, 210–11 (Tenn. 1993)).

When making a motion for summary judgment, the movant has the burden of either: (1) affirmatively negating an essential element of the nonmoving party’s claim; or (2) showing that the nonmoving party cannot prove an essential element of the claim at trial. *Martin*, 271 S.W.3d at 83 (citing *Hannan v. Alltel Publ’g Co.*, 270 S.W.3d 1, 5 (Tenn. 2008)). If the movant meets its burden, then the nonmoving party “is required to produce evidence of specific facts establishing that genuine issues of material fact exist.” *Id.* at 84(citing *McCarley v. W. Quality Food Serv.*, 960 S.W.2d 585, 588 (Tenn. 1998)).

In support of her motion, Ms. Neal relied on the forms which recorded the judgments of conviction and upon the following statement of material fact:

1. The three Judgments entered in the Plaintiff’s cases in the Wilson County criminal court all reflect that Plaintiff was responsible for payment of court costs.

In the memorandum accompanying her motion, Ms. Neal argued that, because the judgments “clearly show” that Mr. Caldwell was responsible for payment of costs, “there was no contract of which the Defendant could have induced a breach. . . .[and] he cannot meet any of the elements of a claim of unlawful inducement of breach of contract.”

In his affidavit opposing summary judgment, Mr. Caldwell stated the following:

2. That on March 23, 2005, in Wilson County, Tennessee, through court appointed counsel, Mr. Harry Christensen, I entered into a plea agreement with

the Assistant District Attorney, Mr. Robert H. Hibbett, of which encompassed (5) five criminal offenses committed in Wilson County while on parole. (Exhibit I). By stipulation, in exchange for my plea of guilty, I would not have any fines or costs assessed in the convictions.

3. That on this date the plea was proposed to the court on record by the Assistant District Attorney, Mr. Robert Hibbett, specifically stating that no fines or costs to be assessed in these convictions. The court accepted my plea of guilty and imposed the convictions as stipulated. (Orig. Judgments Exhibit II).<sup>1</sup>

4. I was first aware that my plea agreement had been breached on or around March 16, 2006, at Hardeman County Correctional Facility. I received a memorandum from Central Trust Fund Administration in Nashville, advising me that the state had paid \$514.00 for court costs in cases #05-102 and #05-0103, Wilson County. Two of my convictions encompassed by the March 23, 2005 plea agreement. The notice further advised that the Department of Corrections was authorized to collect these costs paid by the state by collecting 50% of all deposits made to my Trust Fund Account until the amount is paid in full. (Exhibit III)

5. That from October 18, 2006, through May 14, 2009, \$766.00 was collected from my prison trust account for reimbursement to the state for the state's payment of costs in my cases which were encompassed by my plea agreement. (Exhibit IV)

As shown by the foregoing, there is a genuine issue of material fact as to whether Mr. Caldwell was required to pay the costs of the criminal proceedings. Mr. Caldwell's affidavit states unequivocally that one of the provisions of the agreement was that he would not be assessed costs. The material submitted by Ms. Neal does not contradict that assertion but simply shows that the judgments entered of record showed that costs were assessed against Mr. Caldwell. Moreover, the judgments themselves do not "clearly show" what Ms. Neal claims they show. Two of the judgments have blanks or no amount entered on the "court costs" line while the other has "\$0.00" entered.<sup>2</sup>

The courts of this state apply principles of contract law to construe a plea agreement and determine the appropriate remedy for its breach. *State v. Mellon*, 118 S.W.3d 340 (Tenn. 2003). As noted in *Mellon*:

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<sup>1</sup> Certified copies of these judgments were filed by Ms. Neal with her statement of facts.

<sup>2</sup> There is no question but that the judgment with "\$0.00" entered supports Mr. Caldwell's claim that costs were not to be assessed and that the collection of costs violated the agreement.

Some courts, in addressing breach of plea agreements, have applied principles of contract law to construe the agreement and determine the appropriate remedy. The courts of this state have taken a similar approach. The general rule has been that where an agreement is accepted and later breached, the remedy for the breach is either specific performance or restoration of the parties to the status existing immediately before the plea was entered.

*Id.* at 346 ( internal citations omitted).

Construing the evidence in a light most favorable to Mr. Caldwell, as we are required to do, Ms. Neal did not show that there is no issue of material fact and that she is entitled to judgment as a matter of law.

## **II. Conclusion**

For the foregoing reasons, the judgment of the trial court is reversed. The case is remanded to the Circuit Court for Wilson County for further proceedings in accordance with this opinion.

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RICHARD H. DINKINS, JUDGE